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Written statement* submitted by Amnesty International, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[16 February 2015]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Myanmar: Human Rights Council must address the need for stronger safeguards to ensure business respects human rights[1]

Summary

Foreign investment in Myanmar has been increasing since 2012, after political and economic reforms by the Myanmar government led Western States to ease sanctions that had previously been imposed on the country. Such investment can improve the lives of the people of Myanmar. However, Amnesty International and other civil society groups have major concerns that basic legal safeguards are not yet in place to ensure that investment projects – especially large extractive projects – do not infringe on the human rights of persons living in communities in the vicinity.

Amnesty International has conducted a detailed investigation into illegality and related serious human rights abuses linked to the Monywa copper mining project.[2] These include forced evictions to make way for mining operations; violent repression of protests by Myanmar authorities; and environmental impacts posing a threat to local people's health and access to safe drinking water. The corporate actors involved, which include Canadian, Chinese, and Myanmar companies, have profited from and in some cases colluded with the Myanmar authorities in these abuses – yet the governments of China, Canada and Myanmar have failed to carry out proper investigations and hold the companies to account.

These concerns are not unique to the Monywa project. Amnesty International urges the Human Rights Council to address corporate abuses in any forthcoming resolution on the situation of human rights in Myanmar. The Government of Myanmar should investigate and remedy past abuses at Monywa, and impose stronger legal safeguards to protect people from corporate human rights abuses. The organisation also calls for specific action by the home State governments of companies involved in the Monywa project, and for all governments to require companies entering Myanmar to carry out enhanced human rights due diligence.

Abuses and protests at Monywa

The Monywa project has a long history of **forced evictions**. In 1996 and 1997, the government of Myanmar nationalised 5411 acres of land to make way for a joint venture between the State-owned Mining Enterprise No. 1 (ME1) and Ivanhoe Mines (now Turquoise Hill Resources), a Canadian mining company. Thousands of villagers were driven from their homes and farmland - without any due process, consultation, or payment of adequate compensation - depriving them of their primary source of livelihood. Ivanhoe Mines knew, or should have known, that people were at risk of forced evictions, but did not build in any safeguards to ensure that the land acquisition did not involve human rights violations. Neither it nor ME1 took any corrective action once the forced evictions were carried out.

Development of the Letpadaung mine began in 2011, after the Monywa project was taken over by a Chinese company, Wanbao Mining, and the Myanmar military-owned Union of Myanmar Economic Holdings Limited (UMEHL).

Between 2011 and 2014, more people were forcibly evicted from their homes and farmland after land was acquired for the Letpadaung mine. The authorities failed to meet necessary requirements under international human rights law. The government-appointed Letpadaung Investigation commission found that the authorities had misled people about the land acquisition and evictions. Wanbao's subsidiary both provided material assistance to the Myanmar authorities and also directly engaged in forced evictions itself. As of May 2014, 245 households from four villages in the affected area had been moved to resettlement sites, but 196 households have refused to move. Thousands of people remain at risk of forced eviction.

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[1] A version of this statement with footnotes is available at: www.amnesty.org/en/library/info/ASA16/011/2015/en

[2] Amnesty International, *Open for business? Corporate crime and abuses at Myanmar copper mine*, 10 February 2015, Index: ASA 16/003/2015, available at: http://www.amnesty.org/en/library/info/ASA16/003/2015

The government has targeted activists and individuals who have opposed the new mine and has **repressed protests** against it. Amnesty International has documented a pattern of arrests of people under the Peaceful Assembly and Peaceful Procession Law, 2011 and various provisions under the penal code, and of the use of provisions under the Code of Criminal Procedure to restrict access to and any assembly in the mining area.

On 29 November 2012 police brutally attacked monks and villagers peacefully protesting against the Letpadaung mine, including attacking them with incendiary white phosphorus munitions. The government's intentional use of white phosphorus munitions to punish and intimidate protesters and which caused them severe pain and suffering amounts to torture. No police officer or official has been investigated or prosecuted for their role in the attack, and the police continue to fail to comply with international standards on the use of force while providing protection to the mining operation. On 22 December 2014, Daw Khin Win, a farmer, was killed after police opened fire on protesters.

There are also ongoing concerns over the **environmental impacts** of both the Letpadaung mine and the existing Sabetaung and Kyisintaung (S&K) mine. Hazardous waste materials were discharged from the S&K mine in 1995 and 1996 over a large area of land and in the local river, but the government has failed to protect people living in the vicinity from the pollution which can negatively impact their rights to water and health. The Government has also allowed new mining operations to commence without ensuring a clean-up, and has left companies to monitor the environmental impacts of the new Letpadaung mine's operations. Despite the risk of adverse human rights impacts including on the right to health, Amnesty International's investigation reveals critical gaps and weaknesses in the Environmental and Social Impact Assessment for the Letpadaung project, which must be urgently addressed before any further construction is undertaken.

The Commission also found that the Union of Myanmar Economic Holdings Limited, a military-owned business, had illegally set up and operated a sulphuric acid factory, to supply acid to the mining operations, for six years without obtaining permission from the government. UMEHL has abused the right to health of villagers who live about 200 metres away from the factory, but the government has taken no action against the company and allowed operations to continue.

Lack of adequate legal safeguards

The government of Myanmar enacted two laws in 2012: The Farmland Law, and the Vacant, Fallow and Virgin Lands Management Law. The government retains very broad powers to 'resume' possession of the land. The laws do not prohibit forced evictions or do they set out safeguards, as required under international law that must be complied with prior to evictions. At present, many people, especially small scale farmers and women-headed households, suffer from insecurity of tenure and are at risk of forced evictions when the government takes over land for commercial projects.

The Environmental Conservation Law, 2012 establishes a broad framework for environmental protection, by setting out the duties and powers of the Ministry of Environmental Conservation and Forestry. However the law and the rules adopted by the Ministry still do not set out substantive requirements in relation to waste disposal, pollution of air, water and soil, or other actions which can be prejudicial to health or create a nuisance. Myanmar still lacks environmental quality standards, an environmental impact assessment framework and the technical capacity within the Ministry to monitor and assess large and complex extractive projects.

Myanmar is in the process of reforming its Foreign Investment Law and has announced that it will reform its mining law in order to attract foreign investment. However, these reforms must satisfy the need for the government to put in place adequate human rights and environmental protections.

Recommendations

The Monywa project is a cautionary tale on investment in Myanmar. It starkly demonstrates the unwillingness of the Myanmar government to monitor, regulate and provide remedies against companies with the aim of protecting human rights or to investigate its own officials.

In addition to concerns raised by Amnesty International in its general written statement on Myanmar,[3] the organisation urges the Human Rights Council to use any forthcoming resolution on the human rights situation in Myanmar to also raise concerns over the abuses at the Monywa project and the wider structural issues such as the absence of a legal framework to protect people from abuses linked to extractive projects.

Amnesty International recommends to the Government of Myanmar that it:

- Halt construction of the Letpadaung mine until human rights and environmental concerns are resolved in consultation with affected people.
- Investigate the excessive use of force by the police against Letpadaung protesters, including the use of white phosphorus.
- Ensure that all victims of human rights violations and abuses have access to effective remedies.
- Urgently enact and enforce legislation prohibiting forced evictions and strengthen environmental safeguards to ensure that people are protected against infringements of human rights caused by pollution of water, air or soil by extractive and manufacturing industries.

Amnesty International urges HRC Members and observer states to raise these concerns in discussion of Myanmar in the HRC and in their bilateral relations.

Amnesty International also recommends that concerned governments set out mandatory requirements for enhanced human rights due diligence by companies domiciled or headquartered in the country prior to undertaking any investment or operations in Myanmar.

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[3] Amnesty International, *Myanmar: Human rights reforms under threat*, Written statement to the 28th session of the UN Human Rights Council, March 2015, Index: ASA 16/010/2015